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09/756,688	01/09/2001	Richard L. Fisher	Fisher-001221	4670
7590	04/19/2006		EXAMINER	
Albert W. Watkins Quill & Disc Incorporated 30844 NE 1st Avenue St. Joseph, MN 56374			AVILA, STEPHEN P	
			ART UNIT	PAPER NUMBER
			3617	

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/756,688  
Filing Date: January 09, 2001  
Appellant(s): FISHER, RICHARD L.

For Appellant  
Mr. Albert W. Watkins

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## **EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 27, 2006 appealing from the Office action mailed June 14, 2005.

### **(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

### **(4) Status of the Amendments**

No amendment after final has been filed.

### **(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because the claimed subject matter does not include items contained in Appellant's Summary including mud boat designed for traversing shallow water, swamps, and other muddy waters, a removable bearing, a propulsion motor, an elongated propeller shaft, an elongated casing, and serviceable ball bearings. Almost of all of Appellant summary is not contained in independent claim 40.

A summary of the claimed subject matter of appealed claim 40 is a sealed bearing unit including a casing (140, page 7, line 15 of the specification), a bearing housing (210, page 8, line 1 of the specification), a bearing (200, page 7, last line) and a seal (230, page 9, line 20).

A summary of the claimed subject matter of appealed claim 46 is a sealed bearing unit including a casing (140, page 7, line 15 of the specification), an enlarged bearing housing (210, page 8, line 1 of the specification), a bearing (200, page 7, last line) and a seal (230, page 9, line 20).

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

## **(7) Claims Appendix and Evidence Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

The Evidence Appendix including the five declarations has been considered.

#### **(8) Evidence Relied Upon**

4,710,142 Lovell 12/1987

## **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 40-42, 44-46, 48, 49, 51 and 52 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lovell. Lovell discloses a sealed bearing unit for a marine propulsion system including a casing 22 configured for rotatably receiving a propeller shaft 16 therethrough, wherein the lower end of the casing includes, a bearing housing 24, a bearing 30, 40 in communication between the bearing housing 24 and the propeller shaft 16, a seal 75 contained within the bearing housing 24 (note Figure 4, for example) capable of restricting contaminants from entering the bearing housing 24. With respect to claims 41 and 48, Lovell discloses a cover 62 coupled to the lower end of the bearing housing for retaining the seal 75. With respect to claims 42 and 49, the lower end of the bearing housing 24 and the cover 62 have screw threads (58 and 64 respectively, note also column 4, lines 25-30). With respect to claims 44, 45, 51 and 52,

the bearing housing 24 and the casing 22 are coupled and integral because they are rigidly screwed together (at 86). With respect to claim 46, Lovell discloses a sealed bearing unit for a marine propulsion system including a casing 22 having an inside, an outside and a lower end, and being configured for rotatably receiving a propeller shaft 16 therethrough, wherein the lower end of the casing includes, an enlarged bearing housing 24 (note Figure 4, for example) having an inside, an outside, an upper end and a lower end, wherein the inside diameter of the enlarged bearing housing 24 is larger than the inside diameter of the casing 22 (note Figure 4, for example), a bearing 30, 40 in rotational communication between the enlarged bearing housing 24 and the propeller shaft 16, a seal 75 contained within the enlarged bearing housing 24 (note Figure 4, for example) capable of restricting contaminants from entering the bearing housing 24.

#### **(10) Response to Argument**

Appellant alleges that the patent to Lovell does not disclose a bearing structure. However, to the contrary Lovell clearly discloses a bearing structure, note specifically the "bearing assembly 10" (column 3, line 15 of Lovell) or the "Cutlass bearing insert 40" (column 4, line 48, of Lovell).

Appellant further alleges that the shaft cannot be in rotational communication with the bearing. However, the shaft would not be able to rotate to turn the propeller and propel the boat of Lovell if the shaft was not in rotational communication with the shaft.

Appellant further alleges that the Lovell construction is unsuitable for application with mud motors. However, such limitation is clearly not contained in the appealed

claims. Only claimed limitations may be relied upon for patentability. Additionally, even if the limitation was claimed the device of Lovell is clearly capable of meeting such intended use because of having a sealed unit which would be capable of being operated in muddy waters.

Applicant further alleges that certain words or phrases in the claims are contained in a patent to Foreman. However, the patent to Lovell clearly meets the claimed limitations, whether or not certain words or phrases contained in the claims are in other patents.

With respect to all of the affidavits submitted as evidence with the appeal, all of the affidavits have been considered. However, none of the affidavits discuss how the claimed limitations define over the Lovell patent and thus have limited weight as applied to the issues on appeal.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer. Since the Appellant has not filed a Related Proceeding(s) Appendix it is assumed that there are no related proceedings.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Stephen Avila

4/13/06

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Samuel J. Morano: SJM

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